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**TESTIMONY OF**

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**BEFORE THE**

**TASK FORCE ON THE HEADWATERS FOREST AND RELATED ISSUES  
OF THE COMMITTEE ON RESOURCES  
U.S. HOUSE OF REPRESENTATIVES**

**December 12, 2000  
Room 1334, Longworth House Office Building**

Mr. Chairman and members of the Task Force, my name is William F. Kroener, III. I am General Counsel of the FDIC and am here today with Chairman Tanoue in response to the Committee's subpoena to respond to your questions about litigation filed by the Federal Deposit Insurance Corporation (FDIC) against Mr. Charles Hurwitz in connection with the failure of United Savings Association of Texas (USAT). I appreciate the opportunity to briefly outline the FDIC's litigation involving USAT.

United Savings Association of Texas (USAT) was a savings and loan insured by the Federal Savings and Loan Insurance Corporation (FSLIC). Its failure on December 30, 1988 resulted in a loss to the taxpayers of approximately \$1.6 billion, one of the largest financial institution losses in history. After carefully investigating the actions that contributed to the losses in the failed institution, the FDIC determined that a number of parties, including USAT's holding company, accounting firm and other individuals, including Mr. Hurwitz, were liable for damages. The FDIC already has recovered over \$18 million from most of the persons and entities whose misconduct contributed to USAT's losses.

After carefully investigating the facts, the FDIC determined that Mr. Hurwitz obtained effective control of USAT through a minimal investment that he quickly recovered. He then exercised control over the institution and directed it to engage in a speculative, high-risk investment strategy involving mortgage backed securities that resulted in disastrous losses to the institution. He also violated his duty of loyalty to USAT by engaging in artifices to help USAT's holding companies avoid honoring an obligation to pay hundreds of millions of dollars required by law to support USAT's capital levels. Because of his grossly negligent conduct, the FDIC filed suit against Mr. Hurwitz on August 2, 1995, seeking to recover approximately \$300 million in damages from the USAT failure. This action is the only remaining FDIC lawsuit from the failure of USAT. The FDIC's suit against Mr. Hurwitz is currently pending before the U.S. District Court in Houston, Texas.

In addition, the Office of Thrift Supervision is pursuing an administrative proceeding against Mr. Hurwitz. Pursuant to statute, any recoveries from the OTS action are credited to the FDIC as Manager of the FSLIC Resolution Fund to reduce losses to taxpayers from the failure of USAT. On January 15, 1997, the FDIC amended its complaint to eliminate any duplication of claims with the OTS administrative action. The OTS case is awaiting a decision by an administrative law judge.

In the Task Force's letter of invitation, you request that the FDIC discuss "the Federal Deposit Insurance Corporation's ... advancement of claims against private parties to ultimately obtain additional parcels of land near or adjacent to the Headwaters Forest owned by Pacific Lumber Company...." Mr. Chairman, the facts simply do not support the allegation that the FDIC was part of some "government conspiracy" to "break the Headwaters Forest agreement" or force Mr. Hurwitz to relinquish these properties. As discussed above, the FDIC's suit against Mr. Hurwitz was filed to recover monetary damages to offset the loss to the taxpayers resulting from the failure of USAT. Mr. Hurwitz has repeatedly offered to settle the FDIC's claims in return for parcels of land in

or around the Headwaters Forest. However, the FDIC has expressed its preference for a cash settlement and explored but rejected these non-cash settlement offers by Mr. Hurwitz. These discussions are detailed in the FDIC's October 6, 2000 response to the Task Force's letter dated October 3, 2000. See Attachment A.

During the negotiations that eventually culminated in the passage of P.L. 105-83 implementing the Headwaters Forest Agreement, Mr. Hurwitz and his representatives repeatedly sought to include the FDIC's claims in these negotiations, even providing written authorization for the FDIC to discuss their proposed settlement with other government agencies. A copy of this authorization is attached to this testimony as Attachment B. The FDIC declined to participate in the Headwaters Agreement negotiations that formed the basis of the legislation.

Even after passage of P.L. 105-83, Mr. Hurwitz and his representatives continued to make settlement offers to the FDIC based on parcels of land in or around the Headwaters Forest. See Attachment C. The FDIC declined the settlement offer and reiterated that "the FDIC's preference in these matters is to receive a cash payment." See Attachment D.

This concludes my statement and I am prepared to respond to your questions.